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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/830,058

04/23/2004

Cunku Xi

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136 7590 05/08/2008

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EXAMINER

WEIER, ANTHONY J

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

05/08/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/830,058	<b>Applicant(s)</b> XI ET AL.	
	<b>Examiner</b> Anthony Weier	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 February 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) 8 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 61-25454 taken together with any one of Kakade, Zwiercan et al, and Burkwall, Jr.

JP 61-25454 discloses a soybean noodle prepared from soy curd and a binding agent and containing water as called for in the instant claims (e.g. 80%).

JP 61-25454 is silent regarding the binding agent being a soybean powder. However, soybean flour is a notoriously well known binding agent used in foods as demonstrated in, for example, any one of Kakade (col. 1), Zwiercan et al (col. 3), and Burkwall, Jr. (col. 5). It would have been obvious to one having ordinary skill in the art at the time of the invention to have employed soybean flour as matter of preference among conventional binding agents used in foods. It should be further noted that the soybean flour is inherently defatted.

The claims further call for the presence of soybean protein powder. However, same naturally exists within at least the soybean flour.

The claims also call for the source of soy curd being a byproduct of the soybean protein powder. It is not seen where the particular processing source of the soy curd would make for a patentable distinction, and it would have been further obvious to have

employed soy curd from such processing source as a matter of preference depending on, for example, availability or cost compared to other soy curd sources.

The claims also call for the amounts of various ingredients and the degree to which the soybean powder has been defatted. However, absent a showing of unexpected results, it would have been further obvious to have determined said amounts through routine experimental optimization to attain, for example, the texture or strength of noodle desired.

### ***Response to Arguments***

3. Applicant's arguments filed 2/5/08 have been fully considered but they are not persuasive.

Applicant argues that JP '454 discloses the use of a soy curd rather than a bean curd residue as called for in the instant claims. However, the curd source set forth in JP '454 is a "residue" in the processing of soybean wherein soy extract via the separated water (i.e. soy milk) is also produced and removed from remaining material (i.e. soy curd).

Applicant argues that the soy curd residue of the instant invention is different from the bean curd residue of JP '454. However, the reference to bean curd residue in the instant claims is broad enough to encompass any bean curd material so long as something has been removed from same. Applicant's further arguments that the compositions are different is not convincing, since the instant claims do not further limit the bean curd residue with respect to its specific composition (other than water content).

Applicant argues that the major ingredient in JP 61-25454 is wheat powder. This

is not necessarily the case as the amount of wheat powder (e.g. 30%) may be much less than the bean curd residue (e.g. 70%).

Applicant argues that instant claims 1 calls for the soy noodle to be completely manufactured by soybean product. However, this is not the case as instant claims 1 leaves open the presence of significant amounts of other ingredients by using the term "comprising" in describing the contents of the soybean noodle.

Applicant argues that JP '454 produces a soybean noodle by a different process than that called for in the instant invention. However, the elected instant claims are all directed to the product invention, and it is asserted, regardless of any differences in processing, that the product as specifically claimed is broad enough to encompass the soybean noodle of JP '454.

Applicant also argues that the bean curd residue of the instant invention is rich in dietary fiber and provides apparent masking of the soybean odor attributed to soybean powder. However, these attributes or benefits are not set forth in the instant claims.

All other arguments have been addressed in view of the rejection above.

### ***Conclusion***

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Weier whose telephone number is 571-272-1409. The examiner can normally be reached on Tuesday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Anthony Weier  
Primary Examiner  
Art Unit 1761

/Anthony Weier/  
Primary Examiner, Art Unit 1794

Anthony Weier  
May 4, 2008